

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

YOUNG DOWELL, JR.,

Movant,

v.

CIVIL ACTION NO. 1:16-05661
(Criminal No. 1:04-00066)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court is movant's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255. ECF No. 109. By Standing Order, the action was referred to United States Magistrate Judge Cheryl A. Eifert for submission of proposed findings and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). On December 12, 2017, the magistrate judge submitted her Findings and Recommendation, in which she recommended that court deny plaintiff's motion under 28 U.S.C. § 2255 as untimely; dismiss this action with prejudice; and remove this case from the court's active docket. See ECF No. 127.

In accordance with the provisions of 28 U.S.C. § 636(b), petitioner was allotted fourteen days, plus three mailing days,

in which to file any objections to Magistrate Judge Eifert's Findings and Recommendation. The failure to file such objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Neither party filed any objections to the magistrate judge's Findings and Recommendation within the requisite time period. Accordingly, the court adopts the Findings and Recommendations of Magistrate Judge Eifert as follows:

1. Plaintiff's motion under 28 U.S.C. § 2255 is **DENIED** as untimely (ECF No. 109);
2. This action is **DISMISSED** with prejudice; and
3. The Clerk is directed to remove this case from the court's active docket.


Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676,

683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record.

IT IS SO ORDERED this 10th day of May, 2018.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge